

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: December 18, 1998

TO: James J. McDermott, Regional Director, Region 31

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Teamsters Local 381 (UPS), Case 31-CB-10209

This case was submitted to advice on two Beck issues: (1) whether the Union unlawfully refused to supply guidelines which the Union's accountant used in the past calculate chargeable expenditures; and (2) whether the Charging Party met its burden to explain why certain Union expenditures should not be chargeable.

In late 1997, Charging Party Coleman resigned and became a Beck objector. The Union accorded Coleman Beck objector status and provided him with a copy of its 1996 Financial Statement. Among the expenditures listed as 100 percent chargeable were "meeting and committee expenses", "auto expense", and "out of town travel." Attached to the Financial Statement was a letter from the Union's CPA certifying the accuracy of the Union's chargeable and nonchargeable allocations. The CPA's letter also stated that his analysis was based upon the "special notice" issued in 1990 by then IBT President McCarthy.

In May 1998, Coleman requested a copy of "the McCarthy guidelines." In July, the Union replied that the 1990 McCarthy guidelines were no longer in effect and had been replaced by new policies and procedures, which the Union provided. In its position statement to the Region, the Union asserts that the CPA's letter had mistakenly referred to the prior McCarthy guidelines, and that the new procedures were adopted in January 1998.

We conclude, in agreement with the Region, that it should dismiss these allegations.

Regarding the "McCarthy guidelines", it appears that this was an internal notice setting forth certain expenditures which then IBT President McCarthy considered to be chargeable and/or nonchargeable. In that regard, the McCarthy notice is akin to the supporting schedules and audit protocol in California Saw⁽¹⁾ which the Board found need not be supplied. The Board in that case concluded that the union's disclosure of its major categories of expenditures alone was sufficient to enable objectors to decide whether to mount a challenge. Id. at 239. Accordingly, the Union's refusal to supply the instant information also was lawful.

Regarding the three expenditures which the Union claimed were 100 percent chargeable, the Charging Party contends that these should have been prorated. We note, however, that the Union's accountant certified that these expenses, viz., "meeting and committee expenses", "auto expense", and "out of town travel", were appropriately allocated. In addition, when these expenditures are examined in light of the Union's other admittedly nonchargeable or partially nonchargeable expenses, they are prima facie consistent with the CPA's allocation.⁽²⁾

It is the Charging Party's burden to adduce some evidence tending to show that the Union's chargeability calculation, which appears to be prima facie reasonable, is otherwise incorrect.⁽³⁾ The Charging Party has not supplied

any evidence beyond its mere assertion. Therefore, the Region need not further investigate this allegation and should dismiss it.

B.J.K.

¹ 320 NLRB 224 (1995).

² Compare, e.g., UFCW Local 881 (Osco Drug), Case 13-CB-14488, Advice Memorandum dated April 3, 1995. In that case, we found that a group of expenses, e.g., cleaning service, advertising, data processing, depreciation, etc., were extremely unlikely to have been correctly allocated as 100 chargeable. We noted that the activities associated with this group of expenses arguably could not have been performed without the use of other partially chargeable expenditures, such as office space, office supplies and telephones. We therefore concluded that the first group of expenses were, prima facie, allocated incorrectly as 100 percent chargeable. In contrast, we found that certain other expenditures, e.g., advertising, labor education, state tax, etc., could be fairly characterized as 100 percent chargeable. Therefore, we concluded there, as here, that the charging party had a burden to provide some evidence that these latter expenses were unreasonably allocated.

³, supra; "Guidelines Concerning Processing of Beck Cases", G.C. Memorandum 98-11, dated August 17, 1998.